

DIMITAR SAVOV,)	
)	
Plaintiff,)	Case No.: 2:22-cv-00401-GMN-DJA
vs.)	
)	ORDER GRANTING SECOND MOTION
IMMUNOTECH LABORATORIES, INC.,)	TO DISMISS
)	
Defendant.)	
)	
)	

I. BACKGROUND

¹ Plaintiff also claims that \$190,000 of his funds were wired to Immunotech but that the CEO of Immunotech at the time, Harry Zhabilov, misappropriated those funds. The Court advises Plaintiff that while he may bring a separate lawsuit based on these claims, his misappropriation argument does not affect the narrow analysis for a Petition for Custodianship under NRS 78.347.

1 This Court granted Immunotech’s First Motion to Dismiss with leave for Plaintiff to
2 amend. (Order Granting Mot. Dismiss, ECF No. 53). The First Motion to Dismiss was granted
3 for two reasons. First, this Court explained that according to the plain language of the statute,
4 Plaintiff must provide evidence of his effort to contact the officers and directors of
5 Immunotech. (*Id.* 5:15–20). Second, the Court determined that Plaintiff’s demand to inspect
6 financial records did not satisfy the compliance demand requirement of NRS 78.347(2)(f),
7 because it “would not provide notice to Immunotech that Plaintiff was planning to file a
8 petition for custodianship and allow Immunotech’s officers time to comply.” (*Id.* 6:17–19). In
9 its Second Motion to Dismiss, Defendant argues that the Amended Petition should be dismissed
10 because Plaintiff is again insisting that his demand to inspect Immunotech records should
11 satisfy the NRS 78.347(2)(f) requirement. (*See generally* Second Mot. Dismiss, ECF No. 45).

12 **II. LEGAL STANDARD**

13 Dismissal is appropriate under Rule 12(b)(6) where a pleader fails to state a claim upon
14 which relief can be granted. Fed. R. Civ. P. 12(b)(6). A pleading must give fair notice of a
15 legally cognizable claim and the grounds on which it rests, and although a court must take all
16 factual allegations as true, legal conclusions couched as factual allegations are insufficient. *Bell*
17 *Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Accordingly, Rule 12(b)(6) requires “more
18 than labels and conclusions, and a formulaic recitation of the elements of a cause of action will
19 not do.” *Id.* “To survive a motion to dismiss, a complaint must contain sufficient factual
20 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v.*
21 *Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). “A claim has facial
22 plausibility when the plaintiff pleads factual content that allows the court to draw the
23 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* This standard
24 “asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.*

1 If the court grants a motion to dismiss for failure to state a claim, leave to amend should
 2 be granted unless it is clear that the deficiencies of the complaint cannot be cured by
 3 amendment. *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). Pursuant
 4 to Rule 15(a), the court should “freely” give leave to amend “when justice so requires,” and in
 5 the absence of a reason such as “undue delay, bad faith or dilatory motive on the part of the
 6 movant, repeated failure to cure deficiencies by amendments previously allowed, undue
 7 prejudice to the opposing party by virtue of allowance of the amendment, futility of the
 8 amendment, etc.” *Foman v. Davis*, 371 U.S. 178, 182 (1962).

9 **III. DISCUSSION**

10 A stockholder may “apply to the district court to appoint one or more persons to be
 11 custodians of the corporation . . . when . . . [t]he corporation has abandoned its business and has
 12 failed within a reasonable time to take steps to dissolve, liquidate or distribute its assets”
 13 NRS 78.347(1)(b). The statute requires “[e]vidence of a demand by the applicant to the
 14 officers and directors of the corporation for which the custodianship is sought that the
 15 corporation comply with the provisions of this chapter and that the applicant did not receive a
 16 response.” NRS 78.357(2)(f).

17 Defendant argues that Plaintiff’s Amended Petition makes the same argument as in his
 18 first Petition, which is that Plaintiff’s demand to inspect records should fulfil the demand
 19 requirement of NRS 78.357(2)(f), despite the fact that this Court already denied that argument.
 20 (Second Mot. Dismiss 15:7–14). Further, Defendant maintains that even if the Court finds
 21 Plaintiff made the required demand, Plaintiff cannot demonstrate that he “did not receive a
 22 response,” because Zhabilov’s lawyer responded to Plaintiff’s demand for inspection of
 23 records. (*Id.* 6:3–7:10).

24 Plaintiff responds that he is not alleging that his demand to inspect records was, on its
 25 own, sufficient, but that “he has alleged substantial history and facts regarding all of his efforts

1 to prod the company to activity, including his demand for inspection of books and records.”
2 (Resp. 4:9–11, ECF No. 46). Plaintiff alleges that he made verbal and written demands to
3 Zhabilov in 2020 requesting that he reinstate Immunotech and use the funds for the purpose
4 they were provided, as well as a more recent demand to inspect and audit Immunotech’s
5 financial records. (*Id.* 5:5–23) (citing Am. Pet. ¶¶ 27, 32).² As to Defendant’s argument that he
6 received a response from Zhabilov’s lawyer, Plaintiff claims that “the only response back was
7 from someone who purported to be an ‘authorized representative’ but was not an officer or
8 director of the company. (*Id.* 8:10–13). He argues that a “superficial” response from someone
9 who is neither an officer, director, nor shareholder, is not sufficient. (*Id.* 8:14–23).

10 As an initial matter, NRS 78.347(2)(f) requires Plaintiff’s petition to contain *evidence* of
11 the demand to officers or directors of the corporation, and the only such evidence attached to
12 Plaintiff’s Amended Petition is the demand to inspect records email sent in 2021 and attached
13 as Exhibit 7. Even though Plaintiff’s Amended Petition claims that he “made several verbal
14 and written demands to Zhabilov,” Plaintiff did not attach an exhibit with evidence of these
15 communications as he did for the other communications. (*See* Am. Pet. ¶ 27). Therefore, for
16 purposes of evaluating the demand requiring in NRS 78.347(2)(f), the only *evidence* of a
17 demand made to Immunotech officers or directions, in any form, is Plaintiff’s demand to
18 inspect records.

19 As Defendant points out, this Court has already determined that a demand to inspect
20 records, on its own, does not meet the NRS 78.347(2)(f) requirement. (Order Granting Mot.
21 Dismiss, 6:17–19). However, even if it did, Plaintiff’s demand further fails to meet the
22 requirement because Plaintiff received a response to his demand to inspect records. (*See* NRS
23 78.357(2)(f)) (requiring evidence of a demand to which the “applicant did not receive a

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25 ² Plaintiff’s Response includes efforts to contact Immunotech’s shareholders, the company’s stock transfer agent, and the Nevada Secretary of State, but these communications were not made to “the officers and directors of the corporation” as required by the statute. (*See* Resp. 5:5–24).

1 response”). Exhibit 8 of Plaintiff’s Amended Petition is an email from Zhabilov’s attorney,
2 Ivan Elandijev, denying Plaintiff’s request to inspect Immunotech’s records. (Elandijev Email,
3 Ex. 8 to Am. Pet, ECF No. 44-8). Plaintiff’s argument that this email response was insufficient
4 because it did not come from an officer or director of the company, is unpersuasive. The
5 language of the statute does not require that the response be directly from an officer or director.
6 Therefore, the Court GRANTS Defendant’s Second Motion to Dismiss. Because amendment
7 would be futile, Plaintiff is not granted leave to amend for a second time.

8 **V. CONCLUSION**

9 **IT IS HEREBY ORDERED** that Defendant’s Second Motion to Dismiss, (ECF No.
10 45), is **GRANTED**.

11 The Clerk of Court is kindly instructed to close the case.

12 **DATED** this 9 day of April, 2024.

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16 Gloria M. Navarro, District Judge
17 UNITED STATES DISTRICT COURT
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